Thomas E Lauria
State Bar No. 11998025
Craig H. Averch
State Bar No. 01451020
WHITE & CASE LLP
Wachovia Financial Center
200 South Biscayne Blvd.
Miami, FL 33131
Telephone: (305) 371-2700
Facsimile: (305) 358-5744

Robin Phelan
State Bar No. 15903000
Judith Elkin
State Bar No. 06522200
HAYNES AND BOONE, LLP
901 Main Street
Suite 3100
Dallas, TX 75202
Telephone: (214) 651-5000
Facsimile: (214) 651-5940

ATTORNEYS FOR THE DEBTORS AND DEBTORS-IN-POSSESSION

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

In re	)	Chapter 11 Case
	)	
MIRANT CORPORATION, et al.,	)	Case No. 03-46590 (DML)
	)	Jointly Administered
Debtors.	)	
	)	Date and Time: November 19, 2003 10:30 a.m.

DEBTORS' MOTION FOR AN ORDER PURSUANT TO 11 U.S.C. § 365(a) AND F.R.B.P. 6006 AND 9014 AUTHORIZING THE DEBTORS TO REJECT (i) THE GAS MASTER SERVICE AGREEMENT DATED FEBRUARY 2002; (ii) THE TRANSACTION AGREEMENT DATED FEBRUARY 2002; AND (iii) THE MASTER MONTHLY NETTING, CLOSE-OUT NETTING AND MARGIN AGREEMENT DATED AUGUST 22, 2001 WITH KERN OIL & REFINING CO.

TO THE HONORABLE D. MICHAEL LYNN, UNITED STATES BANKRUPTCY JUDGE:

Mirant Corporation ("Mirant") and its affiliated debtors (collectively, the "Debtors") hereby move for the entry of an order pursuant to section 365 of title 11 of the United States Code, 11 U.S.C. §§ 101-1330, as amended (the "Bankruptcy Code") and Rules 6006 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") authorizing the Debtors to reject (i) the "Gas Master Service Agreement" dated as of February 2002 (the

"Service Agreement"); (ii) the "Transaction Agreement" dated as of February 2002; and (iii) the "Master Monthly Netting, Close-Out Netting and Margin Agreement" dated as of August 22, 2001 (the "Netting Agreement," and, with the Service Agreement and the Transaction Agreement, collectively, the "Contracts") between Kern Oil & Refining Co. ("Kern Oil") and Debtor Mirant Americas Energy Marketing, LP ("MAEM").

In support of their Motion, the Debtors respectfully represent as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

PROCEDURAL BACKGROUND

2. The Cases. Commencing on July 14, 2003, and concluding in the early morning hours of July 15, 2003, (the "Petition Date"), certain of the Debtors (collectively, the "Initial Debtors") filed voluntary petitions in this Court for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1330, as amended.[1] On August 18, 2003, Mirant EcoElectrica Investments I, Ltd. and Puerto Rico Power Investments, Ltd. (collectively, the "New Debtors") commenced chapter 11 cases under the Bankruptcy Code. On October 3, 2003, the following additional Debtors filed voluntary petitions in this Court for relief under chapter 11: (i) Mirant Wrightsville Management, Inc.; (ii) Mirant Wrightsville Investments, Inc.; (iii)

---

[1] Concurrently, Mirant caused two of its Canadian subsidiaries, Mirant Canada Energy Marketing, Ltd and Mirant Canada Energy Marketing Investments, Inc. (collectively, the "Canadian Debtors") to commence plenary insolvency proceedings (the "Canadian Proceedings") in the Court of Queen's Bench of Alberta Judicial District of Calgary (the "Canadian Court") pursuant to the *Companies' Creditors Arrangement Act*. The Canadian Debtors are subject to the sole and exclusive jurisdiction of the Canadian Court.

Wrightsville Power Facility, L.L.C.; and (iv) Wrightsville Development Funding, L.L.C. (collectively, the "Wrightsville Debtors"). The Debtors continue to manage and operate their businesses as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

3. The Cases are Jointly Administered. On July 15, 2003, this Court granted the motion for an order requesting that the bankruptcy estates of the Initial Debtors be jointly administered. On September 8, 2003, the Court entered the order approving joint administration of the cases of the New Debtors with those of the Initial Debtors. Also on September 8, 2003, the Court granted the motion for an order directing that orders entered in the cases of the Initial Debtors be made applicable to those of the New Debtors. On October 6, 2003, the Debtors filed a motion requesting the joint administration of the cases of the Wrightsville Debtors with those of the Initial Debtors. Also on October 6, 2003, the Debtors filed a motion for the entry of an order directing that certain orders entered in the cases of the Initial Debtors be made applicable to the Wrightsville Debtors.

4. The Committees. Three official committees have been appointed by the Office of the United States Trustee for the Northern District of Texas in these administratively consolidated cases. Specifically, an official unsecured creditors' committee and an official committee of equity security holders have been appointed for Mirant and an official unsecured creditors' committee has been appointed for Mirant Americas Generation, LLC (collectively, the "Committees").

THE DEBTORS' BUSINESS OPERATIONS

5. Mirant and its direct and indirect subsidiaries comprise one of the world's largest generators and marketers of electricity. Through its direct and indirect subsidiaries, Mirant produces, sells and delivers reliable energy products and services to utilities, municipal

systems, aggregators, electric-cooperative utilities, producers, generators, marketers and large industrial customers in North America, the Philippines and the Caribbean. Mirant's core business centers on the production and sale of electricity and electrical capacity (essentially the ability to produce electricity on demand). Mirant currently owns or controls enough electric generating capacity to power several of the world's largest cities. Mirant owns or controls 23 power generation plants in countries, including power generation plants in the United States.

6. Mirant employs thousands of employees worldwide. In 2002, Mirant recorded a $542 million loss in earnings before interest, taxes and depreciation on a consolidated basis. Its 2002 operating revenues were approximately $6.4 billion.

FACTS RELEVANT TO THE MOTION

The Contracts.[2]

7. Kern Oil and MAEM are parties to the Service Agreement and the Transaction Agreement pursuant to which MAEM sells and delivers natural gas to Kern Oil's local natural gas utility. Kern Oil and MAEM are also parties to the Netting Agreement that provides for, among other things, certain monthly and close-out netting procedures and margin thresholds in connection with the natural gas transactions detailed in the Service Agreement and the Transaction Agreement. The Debtors have determined that rejection of the Contracts is necessary because they are likely to suffer market losses of approximately $1.1 million (and perhaps as much as $2.9 million) for the months of October through December 1, 2005 in connection with the Contracts.

[2] The Contracts are voluminous and, therefore, not attached. Parties in interest may obtain a copy of such documents by making a written request to the Debtors' counsel.

8. MAEM posted a $3.2 million letter of credit as collateral with the Southern California Gas Company ("Socal Gas") in connection with its activities related to the Contracts, which will be returned to MAEM upon rejection.

9. The Contracts are not essential service contracts of the Debtors.

10. As a result, the Debtors believe that it is well within their business judgment to reject the Contracts.

RELIEF REQUESTED[3]

11. The Debtors hereby move for entry of an order authorizing the Debtors to reject and terminate the Contracts effective as of December 1, 2003. The Debtors have determined, after due inquiry, that the Contracts are burdensome to their estates and constitute an impediment to their ongoing business operations. The resources necessary for the Debtors to service the Contracts could be put to more efficient use and generate greater income for their estates.

BASIS FOR RELIEF

The Contracts Are Executory Contracts that Should Be Rejected.

12. Section 365(a) of the Bankruptcy Code provides that a debtor-in-possession, "subject to the court's approval, may assume or reject an executory contract of the debtor." 11 U.S.C. § 365(a). An executory contract is defined as one where material performance is due on both sides such that the failure of either party to complete performance

---

[3] The Debtors specifically note that they are not moving pursuant to, and this Motion is not being filed in accordance with, the "Amended Order Regarding Motion of Debtors for an Order Pursuant to Sections 365 and 544 of the Bankruptcy Code Authorizing and Approving a Procedure for the Rejection of Certain Executory Contracts" entered by the Bankruptcy Court on August 14, 2003 (the "Rejection Procedures Order"). The Rejection Procedures Order provides that Kern Oil is specifically carved out of the Rejection Procedures Order and, thus, the expedited procedures for rejection do not apply to Kern Oil.

would constitute a material breach of the contract excusing performance of the non-breaching party. *In re Liljeberg Enters., Inc.*, 304 F.3d 410, 436 (5th Cir. 2002); *In re Murexco Petroleum, Inc.*, 15 F.3d 60, 62-63 (5th Cir. 1994).

13. The Contracts are executory contracts because they require (i) MAEM to provide sell and deliver natural gas to Kern Oil on an ongoing basis and (ii) Kern Oil to pay for such natural gas supply. Moreover, MAEM's failure to continue to provide such natural gas (or Kern Oil's failure to pay for such natural gas) would constitute a material breach of the Contracts, excusing the performance of the other party. Therefore, the Contracts are undoubtedly executory contracts that may be rejected under section 365 of the Bankruptcy Code. *See, e.g., In re El Paso Refinery, L.P.*, 220 B.R. 37, 39 n.1 (Bankr. W.D. Tex. 1998) (contract requiring debtor to provide jet fuel to government held to be executory); *In re Cajun Elec. Power Coop., Inc.*, 230 B.R. 693, 702 (Bankr. D. La. 1999) (supply contracts entered into by debtor electric cooperative held executory).

Rejection Of the Contracts Is Within the Debtors' Business Judgment.

14. As noted previously, rejection of an executory contract requires court approval. A debtor's decision to assume or reject will be approved provided that it meets the "business judgment" test, pursuant to which rejection of an executory contract is appropriate if such rejection would benefit the estate. *Richmond Leasing v. Capital Bank, N.A.*, 762 F.2d 1303, 1309 (5th Cir. 1985); *In re G.I. Indus., Inc.*, 204 F.3d 1276, 1282 (9th Cir. 2000) ("[A] bankruptcy court applies the business judgment rule to evaluate a trustee's rejection decision..."); *In re Food Barn Stores, Inc.*, 107 F.3d 558, 567 n. 16 (8th Cir. 1997) (debtor's request to assume or reject contract should be approved where not manifestly unreasonable or made in bad faith). The "business judgment" test is satisfied where the assumption or rejection of an executory

contract enhances the value of the estate. *Richmond Leasing*, 762 F.2d at 1309. Upon a finding that a debtor has exercised sound business judgment in determining whether to assume or reject an executory contract, a court should approve the decision pursuant to section 365(a) of the Bankruptcy Code. *See NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 523 (1984).

15. "The fundamental purpose of reorganization is to prevent a debtor from going into liquidation, with an attendant loss of jobs and possible misuse of economic resources." *Bildisco*, 465 U.S. at 528 (citing H.R.Rep. No. 95-595, p. 220 (1977)).

16. In this case, the rejection of the Contracts is well within the sound business judgment of the Debtors. The Contracts will cause the Debtors to suffer market losses of approximately $1.1 million (and perhaps as much as $2.9 million) for the months of October through December 1, 2005 (the termination date of the Contracts). By rejecting the Contracts now, the Debtors avoid such postpetition losses. The Contracts are not essential to the Debtors' operations and, upon rejection of the Contracts, Socal Gas will return a $3.2 million letter of credit for cancellation. The foregoing is reasonable and justified under the circumstances. This Motion should be granted.

NOTICE

17. Bankruptcy Rules 6006 and 9014 generally require that any request to reject an executory contract must be made only by motion and upon notice to the other party to the contract, other parties in interest, and the United States Trustee. As indicated on the attached Certificate of Service, the Debtors have complied with such rules. No previous motion for the requested relief has been made to this or any other court.

CONCLUSION

WHEREFORE, the Debtors respectfully request that this Court (1) enter an Order, substantially in the form attached hereto as Exhibit "A", authorizing the Debtors to reject and terminate the Contracts effective as of December 1, 2003; and (2) enter such other and further relief as this Court deems just and proper.

Dated: October 23, 2003

HAYNES AND BOONE, LLP
901 Main Street
Suite 3100
Dallas, TX 75202
(214) 651-5000

By /s/ Ian Peck
Robin Phelan
State Bar No. 15903000
Judith Elkin
State Bar No. 06522200
Ian T. Peck
State Bar No. 24013306

-and-

Thomas E Lauria
State Bar No. 11998025
Craig H. Averch
State Bar No. 01451020
WHITE & CASE LLP
Wachovia Financial Center
200 South Biscayne Blvd.
Miami, Florida 33131
(305) 371-2700

ATTORNEYS FOR THE DEBTORS AND DEBTORS-IN-POSSESSION

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has authorized BSI as service agent to cause to serve a true and correct copy of the foregoing document upon all parties listed below via email, facsimile, and/or overnight courier and upon all persons on the Limited Service List via United States first class mail, postage prepaid, on the 23rd day of October, 2003 in accordance with the Federal Rules of Bankruptcy Procedure:

Office of the United States Trustee
1100 Commerce Street
Room 9C60
Dallas, Texas 75242
Fax: 214.767.8971
george.f.mcelreath@usdoj.gov

Kern Oil & Refining Co.
180 E. Ocean Blvd., Suite 1010
Long Beach, CA 90802
Attn: Vice President
Facsimile: (562) 432-4711

Kern Oil & Refining Co.
7724 East Panama Lane
Bakersfield, CA 93307
Facsimile: (805) 845-0330

Counsel for Kern Oil & Refining Co.
Michelle Morgan Harner
Jones Day
77 West Wacker
Chicago, IL 60601
Facsimile: (312) 782-8585

Counsel for Kern Oil & Refining Co.
Debra K. Simpson
Jones Day
2727 North Harwood Street
Dallas, TX 75201
Facsimile: (214) 969-5100

Official Committee of Unsecured Creditors of Mirant Corporation
Paul N. Silverstein
Jason Brookner
Andrews & Kurth L.L.P.
1717 Main Street, Suite 3700
Dallas, TX 75201-4400
Fax: (214) 659-4829

Official Committee of Unsecured Creditors of Mirant Corporation
Mark J. Thompson
Simpson Thatcher & Bartlett LLP
425 Lexington Ave.
New York, NY 10017
Fax: (212) 455-2502

Official Committee of Unsecured Creditors of Mirant Americas Generation, LLC
Deborah D. Williamson
Cox & Smith Incorporated
112 E. Pecan St., Suite 1800
San Antonio, TX 78205
Fax: (210) 226-8395

Official Committee of Unsecured Creditors of Mirant Americas Generation, LLC
Bruce R. Zirinsky
Cadwalader, Wickersham & Taft LLP
100 Maiden Lane
New York, NY 10038
Fax: (212) 504-6666

Official Committee of Equity Security Holders of Mirant Corporation
Edward S. Weisfelner
Leslie H. Scharf
Brown Rudnick Berlack Israels LLP
120 West 45th Street
New York, NY 10036
Fax: (212) 704-0196

Howard L. Siegel
Brown Rudnick Berlack Israels LLP
City Place
185 Asylum Street
Hartford, CT 06103-3402
Fax: (860) 509-6501

William R. Baldiga
Brown Rudnick Berlack Israels LLP
One Financial Center
Boston, MA 02111
Fax: (617) 856-8201

Eric J. Taube
Mark C. Taylor
Hohmann, Taube & Summers, L.L.P.
100 Congress Avenue
Suite 1600
Austin, TX 78701
Fax: (512) 472-5997
|

/s/ Ian T. Peck
Ian T. Peck

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

In re	)	Chapter 11 Case
MIRANT CORPORATION, et al.,	)	Case No. 03-46591(DML)
	)	Jointly Administered
Debtors.	)	

ORDER GRANTING DEBTORS' MOTION FOR AN ORDER PURSUANT TO 11 U.S.C. § 365(a) AND F.R.B.P. 6006 AND 9014 AUTHORIZING THE DEBTORS TO REJECT (i) THE GAS MASTER SERVICE AGREEMENT DATED FEBRUARY 2002; (ii) THE TRANSACTION AGREEMENT DATED FEBRUARY 2002; AND (iii) THE MASTER MONTHLY NETTING, CLOSE-OUT NETTING AND MARGIN AGREEMENT DATED AUGUST 22, 2001 WITH KERN OIL & REFINING CO.

Upon the Motion dated October 23, 2003 filed by Mirant Corporation ("Mirant") and its affiliated debtors (collectively, the "Debtors") for the entry of an order authorizing the Debtors to reject (i) the "Gas Master Service Agreement" dated as of February 2002 (the "Service Agreement"); (ii) the "Transaction Agreement" dated as of February 2002; and (iii) the "Master Monthly Netting, Close-Out Netting and Margin Agreement" dated as of August 22, 2001 (the "Netting Agreement," and, with the Service Agreement and the Transaction Agreement, collectively, the "Contracts") between Kern Oil & Refining Co. ("Kern Oil") and Debtor Mirant Americas Energy Marketing, LP ("MAEM"); and it appearing that the Court has jurisdiction over this matter; and it appearing that due notice of the Motion has been provided, and that no other or further notice need be provided; upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor,

It is hereby:

ORDERED, that the Motion is hereby GRANTED as set forth herein; it is further

ORDERED, that the Contracts will be deemed rejected and terminated effective as of

December 1, 2003 (the "Rejection and Termination Date") and the Debtors will have no further obligations under the Contracts as of the Rejection and Termination Date; and it is further

ORDERED that the Debtors are granted such other and further relief as may be just and proper.

Dated: November ___, 2003

____

D. Michael Lynn,
United States Bankruptcy Judge